

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Person to Contact: [REDACTED]

Telephone Number: [REDACTED]

Refer Reply to: [REDACTED]

Date: MAR 20 1997

Employer Identification Number: [REDACTED]
Key District: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

You were created on August 1, 1995 in the [REDACTED]. Your articles of incorporation state that you are organized for charitable, religious, educational and scientific purposes as defined in section 501(c)(3) of the Code and specifically for the purpose of developing therapeutic techniques, such as [REDACTED], to alleviate patients' neurologic disabilities.

Your Form 1023, application for Recognition of Exemption, provides that your activities will be: to create comprehensive therapy programs for individuals suffering paralytic disabilities, including biofeedback and energetic acupuncture; to research various therapies to reduce the suffering of people with paralytic disabilities; and to establish small therapy centers in key metropolitan areas throughout the western United States.

In a supplemental letter dated January 27, 1997, you state that [REDACTED] will serve as the provider of referrals, [REDACTED] equipment and training. [REDACTED] physical therapists will spend about four months in an extensive hands-on training program learning the application of the [REDACTED] equipment with [REDACTED] in [REDACTED] before commencing treatment of any patients of the [REDACTED] project.

You state that patient fees and charges will be standardized, with base amounts predicated on that of similar pilot programs and justified by cost analysis. A minimum of 20 percent of your annual fundraising income will be allocated to the indigent.

[REDACTED]

In a letter dated January 27, 1997, you state that you will lease commercial space for your project for three or four years. You are also awaiting approval of your exemption from federal income tax application before proceeding with a commitment to a physical location for your pilot facility.

In addition, you state that you do not have a feasibility study, but once you have been approved for exemption from federal income tax you intend to allocate resources to evaluate the feasibility of your project. You are also waiting until you are exempt to draft management contracts and patient/resident contracts in accordance with state and federal law.

You also state that you will make the following representations after you have received approval of your application for exemption:

1. Your rights as enumerated in your By-laws and Certificate of Incorporation are enforceable at law and in equity;
2. You will not suffer or permit the physician Directors or officers (together with all successors and all subsequent designees) to financially benefit in any manner (except for reasonable compensation for services performed or reimbursement of monies used for your benefit), directly or indirectly, because of their relationship with you; and
3. You will expeditiously and vigorously enforce all of your rights in your organization and will pursue all legal and equitable remedies to protect your interest in your assets.

You have three members on your board of directors, [REDACTED] (medical director), [REDACTED] (president), and [REDACTED] (legal counsel), also provide services. You state that you will seek independent, prominent civic leaders in the community to serve on the board of trustees and that you anticipate having a board of ten members before construction on your facility begins.

You do not have a conflict of interest policy or a physician's handbook but you intend to draft and adopt a policy and a handbook once approval of your application has been granted.

Although you have a medical director, you have not drafted any physician-employee contracts nor paid any compensation. You plan to establish an independent compensation committee, consisting of members thoroughly familiar with compensation of physicians, medical staff, and charitable organizations in

general. The independent compensation committee will be formed before any operations have begun or any compensation paid.

You plan to raise funds from fees, an annual fundraising dinner, contributions from individuals, and various other events such as walk-a-thons, golf tournaments, and raffles. You do not plan to use any form of bond structure to fund your activities.

Section 501(a) of the Internal Revenue Code provides for the exemption from federal income tax of organizations described in section 501(c)(3). Section 501(c)(3) describes organizations which, among others, are organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order for an organization to be exempt under section 501(c)(3) of the Code it must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(1)(i)(a)-(b) of the regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization limit the purposes of such organization to one or more exempt purposes and the articles do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. This section cross references the definition of private shareholder which is contained in paragraph (c) of section 1.501(a)-1. That paragraph provides that the words private shareholder or individual in section 501 refer to persons having a personal and private interest in the activities of the organization.

[REDACTED]

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more of the purposes specified in section 501(c)(3) unless it serves a public rather than a private interest. Thus, to meet the requirement of this subsection of the regulations, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Prior to the Service recognizing you as an organization described in section 501(c)(3) of the Code, you must establish that you are organized and operated exclusively for charitable purposes. To meet the operational test you must establish (i) you engage primarily in activities which accomplish one or more exempt purposes specified in section 501(c)(3), and (ii) you are not operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 5.01 of Revenue Procedure 90-27, 1990-1 C.B. 514, provides that a ruling or determination letter will be issued to an organization, provided its application and supporting documents establish that it meets the particular requirements of the section under which exemption is claimed. Under section 5.02 of Rev. Proc. 90-27, exempt status of an organization will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed. A mere restatement of purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement. The organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures. Where the organization cannot demonstrate to the satisfaction of the Service that its proposed activities will be exempt, a record of actual operations may be required before a ruling or determination letter will be issued.

You have stated that you do not anticipate leasing commercial space, hiring staff and commencing your operations until you have received a determination letter from the Service that you are an organization described under section 501(c)(3) of the Code. At this time, you have no operations or evidence of potential operations which will assist the Service in determining that you will be operated exclusively for exempt purposes.

[REDACTED]

potential operations which will assist the Service in determining that you will be operated exclusively for exempt purposes.

You have also stated that after you have begun your operations, salaries for the officers will be based upon comparable jobs in the marketplace, education and expertise. All of the members of your board of directors (two of whom are also officers) provide services to you and you do not have independent directors who will establish the salaries for such directors. Without evidence of your operations, at this time, we cannot determine whether you will not be operated for the benefit of private interests such as your officers and directors.

Based upon the above discussion, we conclude that you have failed to establish that you qualify for exemption under section 501(c)(3) of the Code. You are required to file federal income tax returns on Form 1120.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days this ruling will become final and copies will be forwarded to your key district office. Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

[REDACTED]

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service

[REDACTED]
1111 Constitution Ave, N.W.
Washington, D.C. 20224

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

[REDACTED]
[REDACTED]
[REDACTED]
T [REDACTED]

cc: [REDACTED]

Information Copy: Chief, EP/EO Division